

DIRECTING THE SECRETARY OF THE INTERIOR TO
PERMIT ACCESS ACROSS CERTAIN FEDERAL LANDS IN
THE STATE OF ARKANSAS, AND FOR OTHER PURPOSES

SEPTEMBER 25, 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 1259]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1269) to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 2, after the word "owners" insert "(as of September 1, 1987)".
2. On page 2, line 10, strike "(c)" and insert "(b)".

PURPOSE OF THE MEASURE

The purpose of S. 1259 is to direct the Secretary of the Interior to permit access across the Buffalo National River to private lands outside the boundary of the park along the Old Springtown Road. This access would be for the private noncommercial use of the present owner of these private lands, Mr. Eddie Jones.

BACKGROUND AND NEED

S. 1259 would resolve a dispute about a roadway that runs 450 feet across a portion of the Buffalo National River, Arkansas. In 1981, Mr. Eddie Jones purchased a home on lands located in the park. He was issued a special use permit to move the house and drive across park lands to reach the house which was relocated to

private lands adjoining the park. Mr. Jones was issued extensions of the permit to allow time for the construction of a road on private lands to provide access to the home which did not cross park lands. The National Park Service denied permanent access to Mr. Jones and litigation followed. The United States District Court upheld the National Park Service decision in 1984.

This legislation would direct the Park Service to permit access to the Jones property across the park subject to such regulations as the Secretary determines necessary so as not to unnecessarily diminish the scenic, historic, or other values for which the unit was established. This access would be for the private, noncommercial use of Mr. Jones and his family and is not intended to be a general public access road through the national river.

LEGISLATIVE HISTORY

S. 1259 was introduced by Senator Bumpers on May 21, 1987. A hearing before the Subcommittee on Public Lands, National Parks and Forests was conducted on July 30, 1987. The bill, as reported, is identical to a measure which passed the Senate in the 99th Congress, S. 767.

At a business meeting on September 16, 1987, the Senate Committee on Energy and Natural Resources ordered S. 1259, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 16, 1987, by unanimous voice vote of a quorum present recommends that the Senate pass S. 1259, if amended, as described herein.

COMMITTEE AMENDMENT

The Committee adopted two amendments to S. 1259. The first limits the access across the Buffalo National River to the current owners of the affected property. This language was included in the bill last year but was inadvertently omitted when this year's draft was reintroduced. The second amendment corrects an incorrect subsection reference.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1259, a bill to direct the Secretary of the Interior to permit access across certain federal lands in the State of Arkansas, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, September 16, 1987. Enact-

ment of this bill is not expected to have any net effect on the federal budget.

S. 1259 would allow one private landowner an exclusive right of access across the Buffalo National River Park. The landowner would be required to pay an annual fee to the Secretary of the Interior of up to \$100 in compensation for federal administrative costs.

This bill is expected to have no impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1259. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1259, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 1259 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 13, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1259, a bill "To direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes."

We oppose enactment of this bill.

S. 1259 would direct the Secretary to permit access across the Buffalo National River to private lands outside the boundary along the Old Springtown Road. The private lands depicted on the map referred to in the bill are owned by Mr. Eddie Jones.

In 1982 Mr. Eddie Jones was given a temporary permit to use National Park Service land in Buffalo National River for the purpose of moving a house he had purchased within the national river to private land outside the boundary. Mr. Jones asked for a permanent right of access across park land but was refused. The Superin-

tendent denied his request because the National Park Service does not have the authority to grant permanent vehicular access across park land for private purposes. Furthermore, the land is partially wooded and partially old pasture land that is now returning to its natural condition as a forest. Even if the authority were available, the use proposed by Mr. Jones would not be consistent with maintaining or fostering the natural conditions of the riverway.

In 1983 Mr. Jones sued the Department of the Interior for the right to permanent vehicular access across National Park Service land to the house he had moved to private land outside the boundary. On March 7, 1984, the United States District Court for the Western District of Arkansas dismissed the action, the Court finding that Mr. Jones has no right to use park lands for access to his residence. The judgment was affirmed on appeal.

Mr. Jones is not deprived of access to his house. He built a road outside the national river boundary to his house and has been using it since March 1984. Furthermore, in a serious emergency involving the health or safety of Mr. Jones or his family, there would be no question that he could use park land. The effect of S. 1259 would be to grant Mr. Jones and his successors in title the permanent access right that the Superintendent, National Park Service, and the United States Courts have denied him.

Private access across park land is an extraordinary benefit for Congress to grant to one individual. The facts as found by the United States District Court indicate that no special circumstances exist here. The court stated in part:

The evidence shows that Mr. Jones, "with his eyes wide open", bought the residence that he now occupies at a public sale held by the government and then moved it to where it is now located, across public lands, after obtaining a limited authorization to do so, and after promising that he would within a prescribed time, provide other access to his home. In short, he was misled by no one and he invited his present predicament . . . the evidence indicates that he has other access to the property across lands once owned by his father, and now owned by other members of his family. In fact the easement signed by his father and introduced in evidence as Government Exhibit 9, presumably gives him access to the property.

If the facts showed that Mr. Jones was misled or that he has no reasonable access to his house, we would not object to Congress providing some limited relief. However, the court found that he was not misled and Mr. Jones has alternative access to his residence. We see no benefit to the public by giving Mr. Jones and his successors perpetual access across park land and thereby encouraging other property owners and developers up and down the river to request private access roads for themselves.

We note the bill requires a reasonable payment for the access granted but not to exceed \$100 per year. We have not done an appraisal of the value of the access, and we cannot advise the Committee what it is worth. However, the payment is only required under the bill to cover administrative costs in granting the access. These costs should not exceed \$100 per year, except that if special

regulations are promulgated as required under subsection (c), the cost of publishing alone could exceed this amount.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

SUSAN RECCE,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 1259, as reported.

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